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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/578,759

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Ralf Esser

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EXAMINER

CHIU, RALEIGH W

ART UNIT

PAPER NUMBER

3711

MAIL DATE

DELIVERY MODE

08/17/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/578,759	Applicant(s) ESSER, RALF	
	Examiner Raleigh W. Chiu	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15, 17-23 and 25-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 15 and 17-23 is/are allowed.
- 6) ☒ Claim(s) 1-14 and 25-29 is/are rejected.
- 7) ☒ Claim(s) 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>06/04/2010</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-12, 14 and 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication Number 2002/0092218 (Black) in view of German Publication Number DE 4209105 A1 (Heister).

Regarding claims 1-6 and 14, Black discloses a sports net with advertising printed thereon and also having permanently-open holes distributed over its surface. Black does not explicitly disclose the recited area ratio of holes to foil of 3:1 or more. However, Black recognizes that nets can be manufactured having various mesh sizes and shapes, depending on the application and the strength needed. See paragraph [0029]. Discovering an optimum value of a result effective variable has been held to be within the capabilities of the person of ordinary skill in the art. It would have been obvious to a person having ordinary skill in this art, by routine experimentation, to provide Black with any reasonable mesh size, including the recited ratio of holes to foil of 3:1 or more, depending on the specific net application. Further, although Black does not explicitly describe a foil net, Heister teaches that advertising nets can also be made from transparent sheets of metal or plastic; such sheets are broadly considered to be foils. As it has been well-established that the conclusion of obviousness may be made from common knowledge and common sense of the person of ordinary skill in the art and to select features from the prior art to effect results expected from these features is within the purview of 35 USC

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103, the selection of any known netting material to form the Black net, including foil, would be within the level of ordinary skill in the art.

Regarding the amendment to claim 1, applicant argues that the Black net is intended to be used for protection and loss prevention and may not be suitable for use as a tennis or volleyball net, or as a goal net. However, the physical characteristics of the Black net are considered to allow the Black net to be inherently capable of being used as a sports net. That is to say, a net used to protect spectators from interfering, or being affected by, the action taking place on the field is considered to be sufficiently sturdy to be capable of being able to be extended between two supports poles or over a frame for use as a sports net.

Regarding claims 7-11, Black discloses that it is old and well-known in the net art to provide fixing means such as straps to attach the net to a support structure such as a pole. It would have been an obvious matter of design choice to use any number of fasteners or loops or lugs necessary to satisfactorily attach the net to the sports pole.

Regarding claims 25-28, the Black net as modified above is considered to be inherently capable of being used as recited.

Regarding claim 29, it would have been an obvious matter of design choice to make the Black net holes with rounded corners, since such a modification would have involved a mere change in the shape of a component. A change in shape is generally recognized as being within the level of ordinary skill in the art.

3. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Black and Heister as applied above in view of U.S. Patent Number 5,601,907 (Matsumoto).

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Matsumoto teaches that it is old and well-known in the art that nets can be formed by welding joints. See column 8, lines 55-62.

Allowable Subject Matter

4. Claims 15 and 17-23 are allowed.
5. Claim 30 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments filed 04 June 2010 have been fully considered but they are not persuasive for the reasons set forth above.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raleigh Chiu whose telephone number is (571) 272-4408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eugene Kim, can be reached on (571) 272-4463.

The fax number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

It is noted that all practice before the Office is in writing (see 37 C.F.R. § 1.2) and the proper authority for action on any matter in this regard are the statutes (35 U.S.C.), regulations (37 C.F.R.) and the commentary on policy (MPEP). Therefore, no telephone discussion may be controlling or considered authority of Petitioner's/Caller action(s).

/Raleigh W. Chiu/

Primary Examiner, A.U. 3711

RWC:dei:feif
15 August 2010